**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929**

**OP.No. 29219 of 2000(C)**
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**PETITIONER:**
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1. **MOTHER GENERAL,**
   **ALL SAINTS' COLLEGE,**
   **THIRUVANANTHAPURAM,**
   **REP. BY INCHARGE SR. MARY VIOLET,**
   **HOLY ANGELS CONVENT, THIRUVANANTHAPURAM.**

2. **THE PRINCIPAL,**
   **ALL SAINTS COLLEGE,**
   **TAHIRUVANANTHAPURAM.**

**BY ADV. SRI.LAL GEORGE**

**RESPONDENTS:**
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1. **UNION OF INDIA, REP. BY ITS SECRETARY TO GOVT.,**
   **SURFACE TRA SPORT AND RAILWAYS DEPARTMENT, NEW DELHI.**

2. **CHAIRMAN, RAILWAY BOAD, NEWDELHI.**

3. **GENERAL MANAGER,**
   **SOUTHERN RAILWAY, MADRAS.**

4. **DIVISIONAL RAILWAY MANAGER,**
   **SOUTHERN RAILWAY, THIRUVANANTHAPURAM.**

5. **DIVISIONAL MANAGER, SOUTHERN RAILWAY**
   **THIRUVANANTHAPURAM.**

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**6. STATE OF KERALA, REP. BY ITS SECRETARY
TO GOVT., TRANSPORT DEPARTMENT,
GENERALSECRETARIAT, THIRUVANANTHAPURAM.**

**SRI.K.G.BHASKARAN
SRI.MURALEEDHARA KAIMAL, ADDL.CGSC**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON CMP NO. 49353/2000 IN OP NO. 29219/2000 C.**

**DISMISSED**

**24/07/2007. SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE AGREEMENT DT. 22/2/67.**

**EXT.P2. COPY OF THE BILL DT. 25/5/90.**

**EXT.P3. COPY OF THE BILL DT. 17/7/90.**

**EXT.P4. COPY OF THE BILL DT. 4/6/91.**

**EXT.P5. COPY OF THE LETTER DT. 23/7/91.**

**EXT.P6. COPY OF THE BILL DT. 22/6/92.**

**EXT.P7. COPY OF THE LETTER SENT BY THE P1 DT. 30/6/92.**

**EXT.P8. COPY OF THE BILL DT. 14/10/93.**

**EXT.P9. COPY OF THE LETTTER DT. 1/11/93.**

**EXT.P10. COPY OF THE LETTER DT. 26/09/94.**

**EXT.P11. COPY OF THE LETTER DT. 19/09/95.**

**EXT.P12. COPY OF THE BILL DT. 25/4/97.**

**EXT.P13. COPY OF THE REPRESENTATION DT. 17/12/97.**

**EXT.P14. COPY OF THE LETTER DT. 15/10/98.**

**EXT.P15. COPY OF THE BILL DT. 10/3/99.**

**EXT.P16. COPY OF THE RECIEPT DT. 17/2/00.**

**EXT.P17. COPY OF THE RECEIPT DT. 17/2/00.**

**EXT.P18. COPY OF THE REPRESENTATION DT. 17/11/99.**

**EXT.P19. COPY OF THE LETTER NO. E2/16051/76/L.DIS DT. 18/05/76.**

**EXT.P20. COPY OF THE REPRESENTATION SENT TO THE UNION RAILWAY MINISTER DT. 15/3/99.**

**OP NO. 29219/2000**

**EXT.P21. COPY OF THE REPRESENTATION BY THE P1 IN PERSON TO THE HOME AFFAIRS MINISTER GOVT.OF INDIA.**

**EXT.P22. COPY OF THE OF THE COMMUNICATION DT. 24/3/99.**

**EXT.P23. COPY OF THE DEMAND LETTER DT. 8/6/00.**

**EXT.P24. COPY OF THE LETTERS FROM THE RAILWAY (ARREARS DEMAND LETTER ) DT. 9/8/00.**

**EXT.P25. COPY OF THE FORMAT OF REVISED AGGREEMENT.**

**EXT.P25. COPY OF THE REPRESENTATION BEFORE THE CENTRAL GOVT. RAILWAY BOARD CHAIRMAN DT. 21/7/2007.**

**EXT.P26. COPY OF THE REPRESENTATION BEFORE THE CENTRAL GOVT. SECRETARY RAILWAY AND SURFACE TRANSPORT DT. 21/7/2007.**

**RESPONDENT'S EXHIBITS**

**EXT.R4A. COPY OF THE LETTER GIVEN BY THE PETITIONER TO THE R4 DT. 18/2/00.**

**EXT.R4B. COPY OF THE REPLY GIVEN BY THE CHIEF ENGINEER, DT. 20/2/98.**

*True copy*

*tga*

**T.R. Ramachandran Nair, J.**

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**O.P.NO.29219 of 2000-C**

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**24th day of July, 2007**

**JUDGMENT**

The petitioners are the Mother General and Principal of All Saints College, Thiruvananthapuram. The issue that is raised in the original petition relates to the obligation of the petitioners arising under Ext.P1 agreement for payment of recurring maintenance charges in respect of the Railway Gate, viz. Q 510/21-22 Southern Railway, Thiruvananthapuram. The college in question is established in a compound having 36 acres of property and it was started in the year 1964. The western boundary is the Quilon – Thiruvananthapuram Railway line. When the college was started a 'C' class single manned level crossing gate was provided at the spot in question. Ext.P1 is the agreement and as per clause 8 of the agreement, the licensee has agreed to pay the entire recurring maintenance charges of the level crossing. Clause 9 further stipulates that the licensee shall bear the cost of any further additions or alterations made to the level crossing.

2. The case of the petitioner is that now the level crossing is being used by the students, staff, local public and Government officials for their ingress and egress. Dispute arose when the fifth respondent demanded

payment of various amounts as per Ext.P12 dated 25.4.1997. The total amount claimed is Rs.8,68,422/- including the staff cost charges for the period from 1.10.1979 to 31.3.1996. The petitioners dispute their liability on the ground that the cost of staff is not covered or included within the term 'maintenance charges' as per Ext.P1 agreement. It is accordingly the writ petition has been filed. Thereafter, by Ext.P15, the amounts have been reduced to Rs.5,05,331/-. Even thereafter the petitioner submitted a representation produced as Ext.P18, before the Minister for Railways and Ext.P21 to the Minister for Home Affairs, Govt. of India, New Delhi. The petitioners contend that the terms of the agreement will not reveal any liability on their part to bear the cost of staff and what was included was purely maintenance charges. It is also the case of the petitioners that even subsequent to Ext.P1 at no time there were any valid proceedings to make the petitioners liable for the cost of the staff. Obviously, the Railway is now charging salary paid to the staff who have been benefited by the various pay revision orders also. Therefore, the basic question is whether the issue could be interpreted as to cover even the cost of staff, viz. their salary and allowances.

3. As per order dated 17.10.2000 in C.M.P. No.49353/2000, this court was pleased to grant stay of collection of the amounts covered by

the bills in question.

4. Respondents 2 to 5 have filed a detailed counter affidavit.

5. Along with I.A. No.10174/2007 the petitioners have produced as Exts.P25 and P26 which are representations submitted before the Chairman, Railway Board and also the Secretary, Ministry of Railway and Surface Transport, New Delhi. The petitioners seek for a direction to the authority concerned to consider and pass orders on Exts.P25 and P26.

6. Heard parties.

7. Since the issue involves huge liabilities and that also to be payable by an educational institution, I think the matter has to be considered at the higher level with due consideration to the sentiments expressed by the petitioners in the representations.

8. Therefore, there will be a direction to the second respondent to consider and pass orders on Ext.P25 representation, within a period of three months from the date of receipt of a copy of this judgment. The second respondent will consider the matter in accordance with law, on the merits of the dispute raised by the petitioners. Till orders are passed and

communicated to the petitioners, the interim order passed by this court will continue.

The Original Petition is disposed of in the above terms. No costs.

**(T.R. Ramachandran Nair, Judge.)**

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**T.R. Ramachandran Nair, J.**

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**O.P.NO.29219 of 2000-C**

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**JUDGMENT**

**24th day of July, 2007**